

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST.) NO.23582 OF 2017
IN
WRIT PETITION NO.13082 OF 2016

Hindustan Petroleum Corporation Limited ... Petitioner
Vs.
Mohammed Ismail Dawood Sahib Mulla through
his C.A. Sultan Shirajuddin and another ... Respondents

Mr. S. R. Page for Petitioner.
Mr. Rajkumar Mishra for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : APRIL 25, 2018

P.C. :

Heard Mr. Page, learned Counsel for petitioner and Mr. Mishra, learned Counsel for the respondent No.1. Notice to respondent No.2, being a formal party, is dispensed with.

2. At the joint request of the learned Counsel for the parties, Review Petition is taken up for admission.

3. By this Petition under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), petitioner has sought review of order dated 15.03.2017 passed by this Court in Writ Petition No.13082 of 2016. That Petition was instituted challenging the order dated 07.07.2016 passed by the learned Civil Judge Junior Division, Khalapur below exhibit-37 in Regular Civil Suit No.25 of 2015. By order dated 07.07.2016, the learned trial Judge rejected the application filed by the plaintiff-respondent herein under Order XIII, Rule 4(1) and 7 of C.P.C. read with Sections 62 to 66 of the Indian Evidence Act, 1872. Writ Petition was disposed of on 15.03.2017 and

the order dated 07.07.2016 passed by the learned trial Judge was set aside. Application exhibit-37 was allowed. The learned trial Judge was directed to mark Lease Deed dated 24.11.1966, termination notice dated 28.11.2014 and Power of Attorney dated 22.05.2014 as Exhibits.

4. In support of this Petition, Mr. Page submitted that while allowing the Petition, in paragraph 8 of that order, this Court recorded submission of the first respondent herein that once the documents are marked, the plaintiff does not wish to lead further evidence. The Petition was disposed of and direction was issued that the plaintiff shall not lead further evidence in the matter as far as these documents are concerned. Mr. Page, therefore, submitted that now respondent No.1-plaintiff cannot be permitted to lead evidence as he has closed his evidence.

5. A perusal of the order dated 15.03.2017 shows that respondent No.1-plaintiff filed application for marking - (i) original Power of Attorney dated 22.05.2014, (ii) office copy of termination notice dated 28.11.2014, and (iii) true and authenticated copy of the Lease Deed dated 24.11.1966 (for short 'these documents') as exhibits. The learned trial Judge rejected that application on the ground that except Power of Attorney, plaintiff did not produce the original Lease Deed dated 24.11.1966 as also termination notice dated 28.11.2014. A perusal of paragraph 5 of the impugned order records that the learned trial Judge also noted that plaintiff has produced the original Power of Attorney dated 22.05.2014. In view thereof, it was observed that the learned trial Judge ought to have marked the original Power of Attorney as exhibit.

6. In so far as the Lease Deed dated 24.11.1966 is concerned, in examination-in-chief of the plaintiff's witness, Sultan Sirajuddin, has specifically stated that he is producing true and authenticated copy of the Lease Deed received from respondent No.1-HPCL (petitioner

herein). It was observed that in the cross-examination, witness was not confronted with the statement made in paragraph 4 of the examination-in-chief. In view thereof, marking of true and authenticated copy of the Lease Deed was allowed. As far as notice dated 28.11.2014 is concerned, a perusal of paragraph 16 of the written statement filed by the petitioner herein shows that they had admitted receipt of the notice issued under Section 106 of the Transfer of Property Act, 1882. Apart from that, plaintiff's witness had referred to that notice in paragraph 10 of his evidence. The said statement was also not contradicted. It was, therefore, observed that statement made by the plaintiff's witness as regards Lease Deed dated 24.11.1966 in paragraph 4 as also termination notice dated 28.11.2014 in paragraph 10 remained unchallenged. The learned trial Judge was, therefore, not justified in not marking these documents as exhibits. It is in that context, the statement was made on behalf of the plaintiff that once these documents are marked, he does not wish to lead further evidence. Accordingly to that effect, direction was also issued while disposing of that Petition. Now, the petitioner does not admit the contents of these documents. It is, in that context, necessary to permit the plaintiff to lead additional evidence for proving the contents of these documents.

7. As the petitioner is now disputing contents of these documents, in the ends of justice, it is necessary to relieve the plaintiff from the statement recorded in paragraph 8 that once the documents are marked, he does not wish to lead further evidence. Accordingly, he is relieved from that statement and he is permitted to lead additional evidence only in respect of these documents. By way of abundant caution, it is clarified that in case plaintiff proves contents of these documents by leading additional evidence, petitioner will be at liberty to take cross-examination.

8. In the case of ***Kamlesh Verma Vs. Mayawati***, AIR 2013 SC 3301, the Apex Court has considered the scope of review and has observed thus,

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

9. Applying the tests laid down by the Apex Court to the facts of the present case, no case is made out. Hence, Review Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab